

## Federal Maritime Commission

## § 520.12

systems and records in order to conduct reviews.

### § 520.11 Non-vessel-operating common carriers.

(a) *Financial responsibility.* An ocean transportation intermediary that operates as a non-vessel-operating common carrier shall state in its tariff publication:

(1) That it has furnished the Commission proof of its financial responsibility in the manner and amount required by part 515 of this chapter;

(2) The manner of its financial responsibility;

(3) Whether it is relying on coverage provided by a group or association to which it is a member;

(4) The name and address of the surety company, insurance company or guarantor issuing the bond, insurance policy, or guaranty;

(5) The number of the bond, insurance policy or guaranty; and

(6) Where applicable, the name and address of the group or association providing coverage.

(b) *Agent for service.* Every NVOCC not in the United States shall state the name and address of the person in the United States designated under part 515 of this chapter as its legal agent for service of process, including subpoenas. The NVOCC shall further state that in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Commission's Secretary will be deemed to be its legal agent for service of process.

(c) *Co-Loading.* (1) NVOCCs shall address the following situations in their tariffs:

(i) If an NVOCC does not tender cargo for co-loading, this shall be noted in its tariff.

(ii) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in the tariff.

(iii) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe its co-loading practices and specify its responsibility to pay any charges for the

transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(2) *Documentation requirements.* An NVOCC which tenders cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(3) *Co-loading rates.* No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

### § 520.12 Time/Volume rates.

(a) *General.* Common carriers or conferences may publish in their tariffs rates which are conditioned upon the receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(b) *Publication requirements.* (1) All rates, charges, classifications rules and practices concerning time/volume rates must be set forth in the carrier's or conference's tariff.

(2) The tariff shall identify:

(i) The shipment records that will be maintained to support the rate; and

(ii) The method to be used by shippers giving notice of their intention to use a time/volume rate prior to tendering any shipments under the time/volume arrangement.

(c) *Accepted rates.* Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment. If no shipper gives notice within 30 days of publication, the time/volume rate may be canceled.

(d) *Records.* Shipper notices and shipment records supporting a time/volume rate shall be maintained by the offering carrier or conference for at least 5 years after a shipper's use of a time/volume rate has ended.

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(e) *Liquidated damages.* Time/volume rates may not impose or attempt to impose liquidated damages on any shipper that moves cargo under the rate. Carriers and agreements shall rerate cargo moved at the applicable tariff rate, if a shipper fails to meet the requirements of the time/volume offer.

### § 520.13 Exemptions and exceptions.

(a) *General.* Exemptions from the requirements of this part are governed by section 16 of the Act and Rule 67 of the Commission's Rules of Practice and Procedure, § 502.67 of this chapter.

(b) *Services.* The following services are exempt from the requirements of this part:

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers.

(2) *Controlled carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled carriers when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(ii) The controlled carrier operates in a trade served exclusively by controlled carriers.

(3) *Terminal barge operators in Pacific Slope states.* Transportation provided by terminal barge operators in Pacific Slope states barging containers and containerized cargo by barge between points in the United States are exempt from the tariff publication requirements of the Act and the rules of this part, where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope state, municipality, or other public body or agency subject to the jurisdiction of the Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

(c) *Cargo types.* The following cargo types are not subject to the requirements of this part:

(1) *Bulk cargo, forest products, etc.* This part does not apply to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper and paper waste. Carriers or conferences which voluntarily publish tariff provisions covering otherwise exempt transportation thereby subject themselves to the requirements of this part, including the requirement to adhere to the tariff provisions.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(3) *Used military household goods.* Transportation of used military household goods and personal effects by ocean transportation intermediaries.

(4) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command ("MTMC") and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed in paper format with the Commission as soon as it becomes available.

(5) *Used household goods—General Services Administration.* Transportation of used household goods and personal effects by ocean transportation intermediaries shipped for federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration.

(d) *Services involving foreign countries.* The following transportation services involving foreign countries are not subject to the requirements of this part:

(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same